

EXHIBIT D

PART 2 OF 2

134. Schwed and ZEK have placed Cokus in a position of being at risk to Pena for 12.5% of the relator's fee she is otherwise entitled to as a result of the settlement of the B-MS *qui tam* action.

135. Further, Schwed and ZEK have placed Cokus in a position of being a Defendant in this litigation originated by Pena based upon the Secret Agreement, thus forcing Cokus to incur substantial legal fees.

136. In addition, Schwed and ZEK have placed Cokus in a position to be without the 12.5% of the relator's fees she would otherwise be entitled to as a result of the settlement of the B-MS *qui tam* action, and thus having to forego the interest on such funds.

WHEREFORE, Cokus respectfully requests indemnification from Schwed and ZEK as to all principal, interest, and attorneys fees incurred or forsaken as a result of Pena's claims against Cokus, as set forth in Plaintiff's Complaint, and for the imposition of such other relief as the Court deems just.

COUNT XII

ACCOUNTING

COKUS v. SCHWED and ZEK

137. Cokus hereby incorporates all other paragraphs of this pleading as though fully set forth herein at length.

138. Cokus is entitled to an accounting from Schwed and ZEK for (i) all payments received by Schwed and ZEK relating in any way to the Retainer Agreement; (ii) all billings and hourly work performed by Schwed and ZEK relating in any way to the Retainer Agreement or the prosecution of the Cokus *qui tam* action; (iii) all payments made by Schwed

and ZEK relating in any way to the Retainer Agreement; (iv) for all payments made by Schwed and ZEK to Octavio Pena for the last ten years; and (vii) for all revenues and profits obtained by Schwed and ZEK relating in any way to the Action.

139. Cokus is also entitled to an accounting of all transactions, representations, and financial arrangements between Schwed, ZEK, and Pena as to any other case or client where (1) Schwed or ZEK represented Pena or Lynch International, Inc., or (2) where Schwed or ZEK represented a client to which Pena originated, or for which Pena was retained or in any way compensated.

140. Defendants Schwed and ZEK (together with co-conspirator Pena) are in sole possession of all such information.

141. As fiduciaries, Schwed and ZEK are bound to fully account to Cokus as to all such matters.

WHEREFORE, Cokus hereby demands judgement against Schwed and ZEK for an accounting of all amounts and transactions as set forth herein.

Respectfully submitted,

BOCHETTO & LENTZ, P.C.

By: 

George Bochetto, Esquire
Jeffrey W. Ogren, Esquire
Attorneys for Kathy Cokus

Date:

VERIFICATION

I, Kathy Cokus, Third Party Plaintiff in the instant action, verify that the statements made in the foregoing Complaint Against Additional Defendants are, to the best of my knowledge, true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities. I further state that certain legal positions and the description of the significance and effect of certain facts have been drafted within the Complaint against additional Defendants Schwed and ZEK by my attorneys.

Date:

10/30/07


Kathy Cokus

A

Subject:Bristol-Myers Squibb Qui tam Investigation

Date:Mon, 05 Mar 2001 23:48:08 -0500

From:Kathy Cokus <kcokus@ix.netcom.com>

To:newyork@fbi.gov


I'm not sure what office is handling this investigation and you can lead me to the correct office. I understand that one divisions involved in this investigation is Apothecon, which exists; however, I was the Pricing Manager for this division and I believe I may have information which could be helpful.

Thank you.

Kathy Cokus
(215) 493-4337

10/26/2007

B


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"paul699.6"

Looking for a sensous women for descreet pleasure

I'm 54, Married, Successful and handsome executive work in New Jersey, live in Bucks County, work for an international company, which requires me to travel several times a year. I'm looking for a sensual women who enjoys LOVE-MAKING to the fullest, no strings just sex, good times, good memories and who knows eventually good friendship.

Last Visit: 5/ 8/01


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- (add to yours)

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[View Personality Responses](#)


No Photo On File

Physical Information

Gender Male

Marital Status Married

Race Caucasian

Born on October 01, 1946 (54 years old)

Height 5 ft 9 in

Body Type Slim

Personal Information

Looking for A woman for a "discreet" relationship or 1-on-1 sex.

Smoking/Drinking I'm a non-smoker/I'm a light/social drinker

Other Sites

["Dating"](#)
FriendFinder

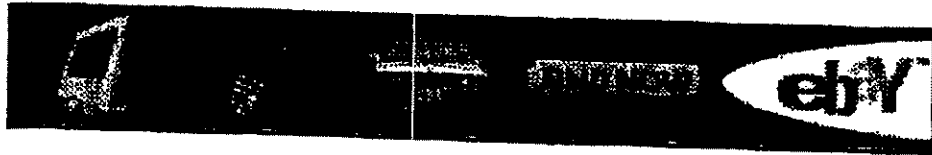
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Message 1 of 5

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Date: Mon, 07 May 2001 10:38:28 PDT

From: paul699.6@adultfriendfinder.com [\[Add to Address Book\]](#)

To: LolaL_@excite.com

Subject: Lola. Are you for real?

[\[Show full header\]](#)

A message from "paul699.6" to "LolaL":

Monday, May 07, 2001 13:03:21

LolaWOW

What else would a man want on a woman the way you describe yourself you are perfect woman!!!!, a perfect 10, but is that possible? Are you for real? "..... intellig independent, compassionate, empathetic, brutally honest, somewhat non-judgmental.... Incredibly Beautiful..... In need to be pampered... comfortable in anything from Channi jeans and a ponytail"

Some how I find contradictory your philosophy ("motto") "Don't give too much of yourself withhold a little, keep them guessing" "they'll come back for more".... How could it be possible for anybody to forget you!

Any way the way you describe your ideal person I could fill those shoes BUT I.... there one item which might be conflictive., also I'm looking for Sensuous woman who enjoys Love-Making to the fullest

Mother's Day

Tuba Day

Send a Hug

Partners

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I live in a mansion, drive the best a sports car in the world (imho), travel around the world (business and pleasure) I have one of the most exiting business (imho) it takes me from board rooms of NYC, Zurich, London to the Jungles of Central and South America, (have book publish on the subject) people consider me handsome (beauty is in the eye of the beholder), intelligent, cocky and down to earth (depends with whom) and love a sensuc lady whom wants to be treated as such..

The conflictive item is I'm married , but as long you are non-judgmental.... its ok with me

For a lady and a man that appear to have it all!!.....What are we looking for? . the pru thing would be to meet and discuss it .., who knows we might find the solution? I to meet you for a cup of coffee or a drink at your favorite place, as true feelings can only I discovered via an in person meeting where the eyes can tell it all. Lets see if our eyes me and there is chemistry....

Have a great day

Paul

This is a copy of my profile:
I'm 54, Married,

Successful and handsome executive work in New Jersey, live in Bucks County, work for a international company, which requires me to travel several times a year. I'm looking for a sensual women who enjoys LOVE-MAKING

to the fullest. , no strings just sex, good times, good memories and who knows eventually good friendship.

AGE: 54

LOCATION: Bedminster, New Jersey, United States

Sent On: May 7, 2001

The preceding message was sent to you in response to your ad on the Adult Friend Finder(sm) web site located at:

<http://adultfriendfinder.com>

You may reply to this message, and our e-mail forwarding system will automatically strip away your real e-mail address, so you don't have to worry about it being revealed. However, you should be careful that you DO NOT INCLUDE A SIGNATURE BLOCK which would give away your real e-mail address.

Getting too many emails? You can block emails from standard members on your update page. This often greatly reduces the number of email you will receive while still letting people who really want to contact you do so.

Adult Friend Finder(tm) does not monitor user e-mail and cannot be held responsible for the contents of any mail you receive through this system.

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C

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Nathan Schwed
(212) 826-5317
nschwed@zeklaw.com

ONE GATEWAY CENTER
NEWARK, NJ 07102
(973) 624-8600
FAX: (973) 624-8585

July 16, 2001

Ms. Kathy Cokus
1704 Kathy Drive
Yardley, PA 19067

Dear Ms. Cokus:

We are pleased to confirm the retention of our firm (the "Firm") in connection with the potential prosecution of a Qui Tam action (the "Action") under the False Claims Act against Bristol-Myers Squibb Company ("BMS").

In consideration of the services rendered and to be rendered by us, you agree to pay a fee to us (and we are authorized to endorse for you any checks that may be paid in resolution or settlement of the Action, and to retain out of any monies that may come into our hand by reason of the above claim) in an amount equal to 37.5% of the sum you recover (including attorneys fees and disbursements you recover) as a result of or in connection with the Action against BMS or any settlement thereof. Such percentage is to be computed on the total sum recovered less the amount of all necessary disbursements.

Although attorneys may advance disbursements on behalf of a client, it is understood the client is responsible for such disbursements regardless of the outcome of the case. The client may be required at any time to pay all disbursements. To the extent we advance disbursements, any such disbursements will be reimbursed to the Firm first out of any monies received on account of the Action and/or claim.

ZEICHNER ELLMAN & KRAUSE LLP

Ms. Kathy Cokus
July 16, 2001
Page 2

You understand that in a Qui Tam action, the government has a limited amount of time to decide whether or not to intervene in the action. If the government chooses to intervene, the government will become the principal party in the Action. However, you will still remain a party in the Action and our firm will continue to represent your interests in the Action.

In the event the government declines to intervene in the Action, you will then have to decide whether or not to pursue the Action. That decision will involve numerous considerations, including (i) a possibility that the Statute of Limitations may bar a substantial portion of your potential claims, (ii) the government's decision to decline intervention may indicate a serious weakness in the claims, (iii) the risk that if you are unsuccessful in the Action, you may be compelled to pay the attorneys fees and expenses of the defendant, and (iv) the costs and expense of proceeding with the Action may be quite substantial.

You understand and agree that if the government declines to intervene in the Action, the Firm may choose to proceed with the Action in conjunction with one or more other law firms. In such event, you agree to cooperate with our firm and assist us in connection with the retention of such other attorneys. Alternatively, the Firm may choose not to proceed with the Action. In such event, you will be given the opportunity to obtain another attorney to proceed with the Action, if you so wish.

You acknowledge that the Firm has made no representations to you of the amount of money that you could be awarded if the case is successful or that the case in fact will be won.

If the foregoing correctly reflects our understanding, please execute this agreement under the words "Accepted and Agreed To," and return one copy of the letter to us.

ZEICHNER ELLMAN & KRAUSE LLP

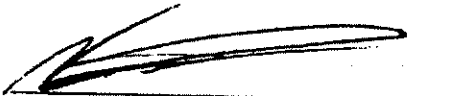
Ms. Kathy Cokus
July 16, 2001
Page 3

We look forward to working with you on this matter.

Sincerely,

ZEICHNER ELLMAN & KRAUSE LLP


By:



Nathan Schwed

NS/pa

ACCEPTED AND AGREED TO:


KATHY COKUS

D

1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 03 CV 5130 (SHS)
-----x

OCTAVIO PENA,

5 Plaintiff,

6 - against -

7 EMMANUEL GUTIERREZ GUZMAN,

8 Defendant.
-----x

9 August 17, 2004
10 10:15 a.m.

10

11

12 Deposition of OCTAVIO PENA,
13 taken by Defendant, pursuant to Notice,
14 held at the offices of Tannenbaum Helpert
15 Syracuse & Hirschtritt LLP, 900 Third
16 Avenue, New York, New York 10022, before
17 Jineen Pavesi, a Registered Professional
18 Reporter, Registered Merit Reporter,
19 Certified Realtime Reporter and Notary
20 Public of the State of New York.

21

22

23

24

25

1

2 A P P E A R A N C E S :

3

4

5 ZEICHNER ELLMAN & KRAUSE LLP

6 575 Lexington Avenue

7 New York, New York 10022

8 Attorneys for Plaintiff

9

10 BY: NATHAN SCHWED, ESQ.

11

12

13

14 TANNENBAUM HELPERN SYRACUSE & HIRSCHTRITT

15 LLP

16 900 Third Avenue

17 New York, New York 10022

18 Attorneys for Defendant

19

20 BY: JAMIE BW STECHER, ESQ.

21 FRANK J. MACCHIAROLA, ESQ.

22

23

24

25

2 O C T A V I O P E N A,
3 having first been duly sworn by a Notary
4 Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. STECHER:

8 Q. State your name, please.

9 A. Octavio Pena.

10 Q. Where do you reside?

11 A. 5835 Upper Mountain Road, New
12 Hope, Pennsylvania.

13 Q. How are you employed?

14 A. I am not employed.

15 Q. You are unemployed?

16 A. Yes, I am retired.

17 Q. Do you have a place of
18 business?

19 A. Yes.

20 Q. Where is the place of business
21 that you have even though you are retired?

22 A. Lynch International, 521 Fifth
23 Avenue in New York City.

24 Q. What is Lynch International?

25 A. Private investigations.

4

1 PENA

2 Q. It is a New York corporation?

3 A. I think it is New Jersey, I

4 don't know.

5 Q. Is it licensed to do business
6 in New York?

7 A. Yes.

8 Q. What kind of licenses does it
9 have?

10 A. Private investigator.

11 Q. Is it licensed to do business
12 by the New York Secretary of State in the
13 State of New York?

14 A. I assume so.

15 Q. But you don't know?

16 A. I don't know.

17 MR. SCHWED: Are you asking
18 today?

19 MR. STECHER: Yes, today.

20 MR. SCHWED: Currently, does it
21 currently have any licenses, that you know
22 of?

23 THE WITNESS: Yes, private
24 investigator, yes.

25 Q. What is your position with

5

1 PENA

2 Lynch International?

3 A. I am the president.

4 Q. How many employees does Lynch

5 International have?
6 A. None.
7 Q. No employees?
8 A. No employees.
9 Q. Does it have any shareholders?
10 A. Yes.
11 Q. Are you a shareholder?
12 A. Yes.
13 Q. Are you the only shareholder?
14 A. I am the only shareholder; my
15 wife might be a shareholder, minority
16 shareholder, too, but I don't remember.
17 Q. Other than your wife and
18 yourself, are you aware of any
19 shareholders today of Lynch International?
20 A. No.
21 Q. Mr. Lynch used to be a
22 shareholder, correct?
23 A. Yes.
24 Q. Did there come a time when you
25 bought him out?

6

1 PENA
2 A. Yes.
3 Q. When was that?
4 A. Oh, I don't remember.
5 Q. Is Lynch International still
6 engaged in the business of private

7 investigations?

8 A. It is licensed to do private
9 investigations.

10 Most of the work I have been
11 doing is pro bono work, I have not
12 solicited any business for ten, 15 years.

13 Q. Leaving aside the matter that
14 is the subject of this litigation, have
15 you accepted any paying business either
16 for yourself or for Lynch International in
17 the last ten years?

18 MR. SCHWED: Objection.

19 You can answer.

20 A. In the last ten years, any
21 paying business, I don't think so.

22 MR. SCHWED: Are you asking
23 whether he has been paid for any work?

24 MR. STECHER: No.

25 My question before was whether

7

1 PENA

2 Lynch was still involved -- I asked the
3 witness if Lynch International is still
4 engaged in the business of private
5 investigations and he told me that he has
6 not solicited any business for ten or 15
7 years, so I am wondering and wanted to

8 know whether he had accepted any business.

9 MR. SCHWED: Because you used
10 the word "paying."

11 Whether he got paid or not, I
12 want to clarify what you are searching
13 for.

14 MR. STECHER: Okay.

15 I am not interested in this
16 question in whether or not he got paid; I
17 am interested in whether or not at the
18 beginning of the engagement, the
19 understanding was that he was going to get
20 paid, and I picked ten years because
21 that's the figure that the witness gave
22 me.

23 A. Can you repeat the question.

24 Q. In the last ten years, have you
25 performed any services for any clients,

8

1 PENA
2 other than with respect to this
3 litigation, so other than the matter of
4 the Mexican judgment, in which at the
5 beginning of the engagement your
6 understanding was that the client was
7 going to pay you?

8 A. Ten years, I don't remember.

9 Q. Who was the last paying client

10 you had, again leaving aside the dispute
11 between yourself and the defendants in
12 this case?

13 MR. SCHWED: Objection.

14 Do you want to know when was
15 the last time he got paid, I don't have a
16 problem with that; I don't think you are
17 entitled to know who his clients are.

18 MR. STECHER: Well, I don't
19 agree with you, but I'll change the
20 question.

21 Q. When was the last time you
22 accepted the business of a client who you
23 expected to pay you?

24 A. Probably it was about ten years
25 ago, it might have been a U.S. court.

9

1 PENA

2 Q. It may have been that you were
3 engaged by a U.S. court, is that what
4 you're saying?

5 A. Could I talk to my attorney, I
6 just want to clarify something.

7 MR. SCHWED: But there is a
8 question pending.

9 Again, Mr. Stecher is not so
10 interested in who you were retained by, he

11 is more interested in when you were
12 retained.

13 And let me just see if I can
14 clarify one thing, because I know what he
15 is having trouble with.

16 What Mr. Stecher is interested
17 in is not whether you expected to get paid
18 on an hour basis or you expected to get
19 paid on a contingent basis; as long as you
20 had some reasonable expectation that you
21 might get paid, that would be considered
22 the kind of retention he is talking about,
23 as well.

24 I believe that may have been
25 giving you some trouble.

10

1 PENA

2 So he is talking about any time
3 you have been retained, the last time you
4 were retained where you had a reasonable
5 expectation that you might get paid,
6 whether it was result-based or not.

7 A. It was a bankruptcy court --

8 MR. SCHWED: The question was
9 not by whom, the question was when.

10 A. It might have been in the
11 mid-Nineties, somewhere around there.

12 Q. This was in a bankruptcy

E

----- Original Message -----

Subject:Re: [Fwd: Re: BMN PRESS RELEASE: Schering-Plough Settles FraudInv estigation For \$345 mln]

Date:Wed, 04 Aug 2004 12:03:37 -0400

From:Kathy Cokus <kcokus@ix.netcom.com>

To:Nathan Schwed <nschwed@zeklaw.com>

References:<737A656A52271946B3FC7A1A4016D24C07AA66@ZekExchange.zeklaw.com>

N-

I didn't mean to be pushy.....just didn't know if it ended up in the junk mail? I'm totally confused at this point with all of their settlements.....

http://quote.bloomberg.com/apps/news?pid=10000103&sid=a_rLpErrGagk&refer=us

Just saw this one and I thought it was \$75 million? They have so darn many of them that I've lost track. Guess we just have to wait for a phone call!

Hope all is well with you and your family.....

Kath

Nathan Schwed wrote:

K-

Yes I did. I just didn't get a chance to reply.

I think you are correct that it only covers one type of claim and that our case covers several different types of claims. However, you can't really make an accurate analogy or draw any conclusions regarding our case unless you have a lot more info. I believe there are many factors and considerations that go into the amount of a settlement, including the following:

The total revenue generated by the "tainted" sales.

The total profit generated by the tainted sales.

The aggregate difference between what the government actually paid for drugs and what it should have paid.

The total amount of false written submissions by the co.

We don't know how the numbers for Schering-Plough compare to those for BMS.

In addition, there are other factors that might enter into the equation. They might consider the egregiousness of the fraud. Was it a company-wide policy or merely a rouge part of the company? Were there deliberate and pre-meditated steps taken to cover up and conceal the fraud? Were the drugs involved "popular" drugs that were taken by a wide range of the population?

I imagine there are probably many other things they consider as well. Therefore, I don't think we have enough info to draw an analogy.

Nevertheless, it is probably a good indication that the government is not going to settle these types of claims cheaply.

I hope I have been helpful, but you should realize that much of this is mere conjecture by someone who, like you, hopes there will be many zeros in the BMS settlement.

Best regards,
Nathan

-----Original Message-----

From: Kathy Cokus [<mailto:kcokus@ix.netcom.com>]

Sent: Wednesday, August 04, 2004 10:37 AM

To: Nathan

Subject: [Fwd: Re: BMN PRESS RELEASE: Schering-Plough Settles FraudInvestigation For \$345 mln]

N-

Did you receive this?

10/25/2007

Kath

----- Original Message -----

Subject: Re: BMN PRESS RELEASE: Schering-Plough Settles Fraud Investigation For \$345 mln
Date: Tue, 03 Aug 2004 11:56:06 -0400
From: Kathy Cokus <kcokus@ix.netcom.com>
To: Nathan Schwed <nschwed@zeklaw.com>
References: <737A656A52271946B3FC7A1A4016D24C07AA5A@ZekExchange.zeklaw.com>

N-

Tell me if my thinking is incorrect.....this is a suit over only one item, correct?

So, shouldn't our suit be for a considerably larger amount?

Kath

Nathan Schwed wrote:

According to a NY Times article of 7/31, the 3 Qui Tam Relators shared \$31.7 million.

-----Original Message-----

From: lli2001 [<mailto:lli2001@hotmail.com>]
Sent: Tuesday, August 03, 2004 10:25 AM
To: Kathy xCokus; Nathan Schwed
Subject: BMN PRESS RELEASE: Schering-Plough Settles Fraud Investigation For \$345 mln

Date: Mon, 2 Aug 2004 19:42:26 -0500 (CDT)
Subject: BMN PRESS RELEASE:
Schering-Plough Settles Fraud Investigation For \$345 mln

PRESS RELEASE

Contact: Matthew Hay
Rx Compliance Report
800-290-8987 phone
RxCompliance@aol.com

SCHERING-PLOUGH SETTLES FRAUD INVESTIGATION FOR \$345 MLN
-- New Medicare regs include ASP & drug reimbursement changes
-- Charter rate of \$499 expires Aug 31 2004 <http://mailiwant.com/links.jsp?linkid=14369&subid=2043065&campid=136907&typ>

e=0

ALEXANDRIA VA USA -- MEDICAL INDUSTRY E-MAIL NEWS SERVICE(TM) -- AUG 02 2004
-- Schering-Plough last week announced its long-awaited settlement with the US Attorney for the Eastern District of Pennsylvania, over charges that it defrauded Medicaid by not offering the government its best price for Claritin.

According to US Attorney Patrick Meehan, Schering-Plough used terms such as "data fee" and "value added" to camouflage what amounted to old-fashioned kickbacks. "This wasn't a mistake," says Meehan. "It was a marketing strategy."

The settlement, while sizable, deals with activity dating back to 1998. In the Aug 16 2004 issue of Rx Compliance Report, Schering-Plough's compliance chief, Brent Saunders, outlines new challenges facing drug and device companies and suggests a response. "Compliance programs are supposed to be proactive and prophylactic," says Saunders. "Somehow, you have to go from firefighting to fire prevention." To order the new Aug 16 issue, please click below (or copy/paste):

<http://mailiwant.com/links.jsp?linkid=14370&subid=2043065&campid=136907&typ>
e=0

SPECIAL UPDATE: NEW MEDICARE REGS INCLUDE ASP & DRUG REIMBURSEMENT CHANGES

10/25/2007

The US Centers for Medicare & Medicaid Services (CMS) issued proposed regulations last week dealing with the implementation of the Average Sales Price (ASP) provisions of the Medicare Modernization Act (MMA). In a Special Update published this week by Rx Compliance Report, drug pricing expert Bill Sarraile says many drug manufacturers may be moving too slowly to assess the impact of the Part D benefit and are putting their products at risk.

"The challenges are clear," says Sarraile and Anna Spencer of Sidley Austin. "To be successful, pharmaceutical manufacturers need to focus now on developing an integrated strategy to contend with and to meet those challenges." Direct-to-consumer marketing will continue to be a partial solution, although it cannot address the problem of off-label uses, they warn.

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The acquittal of 8 TAP sales managers in July 2004 is a major setback to the government's efforts to criminalize many long-standing sales and marketing practices. The sweeping verdict will almost certainly cause prosecutors to think twice about pursuing novel theories, predict several of the defendant's attorneys. Also included is an excerpt of Bob Tarun's cross-examination of Doug Durand, the government's star witness, who failed to answer many key questions.

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Wednesday, August 4, 2004 · Last updated 2:05 a.m. PT

Source: Bristol-Myers likely to pay \$75M

By MARCY GORDON
AP BUSINESS WRITER

WASHINGTON -- Pharmaceutical giant Bristol-Myers Squibb Co. likely will pay about \$75 million to settle federal regulators' charges that it improperly manipulated its inventory of drugs to inflate its reported sales, a person familiar with the matter said Tuesday.

The Securities and Exchange Commission could announce the settlement with Bristol-Myers on Wednesday, the person said on condition of anonymity, confirming a report by The Wall Street Journal.

It would be one of the largest SEC penalties in recent years for alleged accounting violations against a viable company that continues to operate. In 2002, Xerox Corp. paid a \$10 million fine, the largest ever at the time, to resolve allegations of accounting fraud.

Spokesmen for Bristol-Myers, based in New York but with research headquarters in Princeton, N.J., couldn't immediately be reached for comment.

The SEC, the Justice Department and the U.S. Attorney's Office in New Jersey have been investigating a Bristol-Myers program that offered wholesalers huge discounts to buy more prescription medicines than they could sell. A federal grand jury convened in Newark early this year to pursue a criminal investigation.

The inventory manipulation, known as "channel stuffing," is not illegal, but some industry observers have called the level at Bristol-Myers excessive. It occurred during a period when the company was trying to keep pace with rivals posting double-digit growth in profits. Some industry experts have questioned whether key Bristol-Myers managers benefited financially through bigger bonuses based on company sales

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levels.

The maker of Excedrin, Plavix and Pravachol disclosed in March 2003 that it had overstated revenue for 1999-2001 by \$2.5 billion as a result of the discounts to wholesalers.

Last month, Bristol-Myers said it would pay \$300 million to settle a class-action lawsuit by shareholders that accused the company of lying about accounting and its investment in ImClone Systems Inc. The suit stemmed from a 2001 announcement in which Bristol-Myers said it would invest \$2 billion in ImClone to gain marketing rights for the ImClone colon-cancer drug Erbitux.

The shareholders contended that Bristol-Myers made overly optimistic statements about the drug's chances for approval by the Food and Drug Administration.

The FDA declined in December 2001 to review ImClone's application for approval for Erbitux. Martha Stewart's sale of ImClone stock one day before that announcement led to her recent conviction for lying to federal investigators. The FDA approved the drug earlier this year.

Bristol-Myers neither admitted nor denied wrongdoing in the settlement.

During 2003's fourth quarter, Bristol-Myers took a \$225 million charge to establish reserves for liabilities stemming from the pending government investigations and civil litigation. Some analysts read that as a sign the company was nearing settlements of the government cases.

On the Net:

Securities and Exchange Commission: <http://www.sec.gov>

Bristol-Myers Squibb Co.: <http://www.bristolmyers.com>

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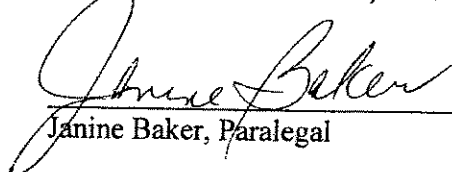
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